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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 SHERMAINE P.,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting  
15 Commissioner of Social Security  
16 Administration,

17 Defendant.  
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Case No. CV 17-2880-SP

MEMORANDUM OPINION AND  
ORDER

19 I.

20 **INTRODUCTION**

21 On April 15, 2017, plaintiff Shermaine P. filed a complaint against  
22 defendant, the Commissioner of the Social Security Administration  
23 (“Commissioner”), seeking a review of a denial of a period of disability, disability  
24 insurance benefits (“DIB”), and supplemental security income (“SSI”). The  
25 parties have fully briefed the matters in dispute, and the court deems the matter  
26 suitable for adjudication without oral argument.

27 Plaintiff presents one disputed issue for decision, whether the  
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1 Administrative Law Judge (“ALJ”) properly considered the opinion of the treating  
2 physician. Motion for Summary Judgment (“P. Mem.”) at 4-13; *see* Memorandum  
3 in Support of Defendant’s Answer (“D. Mem.”) at 2-6.

4 Having carefully studied the parties’ memoranda, the Administrative Record  
5 (“AR”), and the decision of the ALJ, the court concludes that, as detailed herein,  
6 the ALJ properly considered the opinion of the treating physician. Consequently,  
7 the court affirms the decision of the Commissioner denying benefits.

## 8 II.

### 9 **FACTUAL AND PROCEDURAL BACKGROUND**

10 Plaintiff, who was thirty-five years old on the alleged disability onset date,  
11 attended school through the tenth grade. AR at 61, 184. He has past relevant  
12 work as a caretaker/home-attendant. *Id.* at 51.

13 On June 28, 2013, plaintiff filed an application for a period of disability and  
14 DIB, and on July 2, 2013, plaintiff filed an application for SSI, due to gunshot  
15 wounds, post-traumatic stress disorder (“PTSD”), and insomnia. *Id.* at 61, 70.  
16 The applications were denied initially and upon reconsideration, after which  
17 plaintiff filed a request for a hearing. *Id.* at 110-13, 118-25.

18 On January 12, 2016, the ALJ held a hearing. *Id.* at 35-60. Plaintiff,  
19 represented by counsel, appeared and testified at the hearing. *Id.* The ALJ also  
20 heard testimony from Edmond G. Carata, a vocational expert. *See id.* at 51-58.  
21 On February 18, 2016, the ALJ denied plaintiff’s claims for benefits. *Id.* at 19-30.

22 Applying the well-known five-step sequential evaluation process, the ALJ  
23 found, at step one, that plaintiff had not engaged in substantial gainful activity  
24 since June 1, 2013, the alleged onset date. *Id.* at 21.

25 At step two, the ALJ found plaintiff suffered from the following severe  
26 impairments: a history of gunshot wounds, obesity, and PTSD. *Id.*

27 At step three, the ALJ found plaintiff’s impairments, whether individually  
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1 or in combination, did not meet or medically equal one of the listed impairments  
2 set forth in 20 C.F.R. part 404, Subpart P, Appendix 1. *Id.*

3 The ALJ then assessed plaintiff's residual functional capacity ("RFC"),<sup>1</sup> and  
4 determined plaintiff had the RFC to perform light work, with the limitations that  
5 plaintiff could: stand and walk for a total of four hours out of an eight-hour day;  
6 interact with coworkers and supervisors on only an occasional basis; and have no  
7 contact with the public. *Id.* at 24.

8 The ALJ found, at step four, that plaintiff was incapable of performing his  
9 past relevant work as a caretaker/home-attendant. *Id.* at 29.

10 At step five, the ALJ found there were jobs that existed in significant  
11 numbers in the national economy that plaintiff could perform, including  
12 production assembler, inspector, and handkerchief folder. *Id.* at 29-30.  
13 Consequently, the ALJ concluded plaintiff did not suffer from a disability as  
14 defined by the Social Security Act. *Id.* at 30.

15 Plaintiff filed a timely request for review of the ALJ's decision, but the  
16 Appeals Council denied the request for review. *Id.* at 1-3. The ALJ's decision  
17 stands as the final decision of the Commissioner.

### 18 III.

#### 19 STANDARD OF REVIEW

20 This court is empowered to review decisions by the Commissioner to deny  
21 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
22 Administration must be upheld if they are free of legal error and supported by  
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24 <sup>1</sup> Residual functional capacity is what a claimant can do despite existing  
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152,  
26 1155-56 n.5-7 (9th Cir. 1989). "Between steps three and four of the five-step  
27 evaluation, the ALJ must proceed to an intermediate step in which the ALJ  
28 assesses the claimant's residual functional capacity." *Massachi v. Astrue*, 486  
F.3d 1149, 1151 n.2 (9th Cir. 2007).

1 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)  
2 (as amended). But if the court determines the ALJ's findings are based on legal  
3 error or are not supported by substantial evidence in the record, the court may  
4 reject the findings and set aside the decision to deny benefits. *Aukland v.*  
5 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d  
6 1144, 1147 (9th Cir. 2001).

7 "Substantial evidence is more than a mere scintilla, but less than a  
8 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such  
9 "relevant evidence which a reasonable person might accept as adequate to support  
10 a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276  
11 F.3d at 459. To determine whether substantial evidence supports the ALJ's  
12 finding, the reviewing court must review the administrative record as a whole,  
13 "weighing both the evidence that supports and the evidence that detracts from the  
14 ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's decision "cannot be  
15 affirmed simply by isolating a specific quantum of supporting evidence."  
16 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th  
17 Cir. 1998)). If the evidence can reasonably support either affirming or reversing  
18 the ALJ's decision, the reviewing court "may not substitute its judgment for that  
19 of the ALJ." *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.  
20 1992)).

#### 21 IV.

#### 22 DISCUSSION

23 Plaintiff argues the ALJ failed to properly consider the opinion of his  
24 treating physician, Dr. Tyron C. Reece. P. Mem. at 4-13. Specifically, plaintiff  
25 contends the ALJ failed to provide specific and legitimate reasons supported by  
26 substantial evidence for rejecting Dr. Reece's opinion regarding plaintiff's mental  
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1 limitations.<sup>2</sup> *Id.*

2 In determining whether a claimant has a medically determinable  
3 impairment, among the evidence the ALJ considers is medical evidence. 20  
4 C.F.R. §§ 404.1527(b), 416.927(b).<sup>3</sup> In evaluating medical opinions, the  
5 regulations distinguish among three types of physicians: (1) treating physicians;  
6 (2) examining physicians; and (3) non-examining physicians. 20 C.F.R.  
7 §§ 404.1527(c), (e), 416.927(c), (e); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
8 1996) (as amended). “Generally, a treating physician’s opinion carries more  
9 weight than an examining physician’s, and an examining physician’s opinion  
10 carries more weight than a reviewing physician’s.” *Holohan v. Massanari*, 246  
11 F.3d 1195, 1202 (9th Cir. 2001); 20 C.F.R. §§ 404.1527(c)(1)-(2), 416.927(c)(1)-  
12 (2). The opinion of the treating physician is generally given the greatest weight  
13 because the treating physician is employed to cure and has a greater opportunity to  
14 understand and observe a claimant. *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th  
15 Cir. 1996); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

16 Nevertheless, the ALJ is not bound by the opinion of the treating physician.  
17 *Smolen*, 80 F.3d at 1285. If a treating physician’s opinion is uncontradicted, the  
18 ALJ must provide clear and convincing reasons for giving it less weight. *Lester*,  
19 81 F.3d at 830. If the treating physician’s opinion is contradicted by other  
20 opinions, the ALJ must provide specific and legitimate reasons supported by  
21 substantial evidence for rejecting it. *Id.* at 830. Likewise, the ALJ must provide  
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23 <sup>2</sup> In his applications, plaintiff additionally alleged he had physical  
24 impairments resulting from gunshot wounds, and Dr. Reece also addressed  
25 plaintiff’s physical impairments. But because plaintiff only claims error with  
26 respect to his mental limitations, this court will not discuss the medical records  
and opinions concerning plaintiff’s physical health.

27 <sup>3</sup> All citations to the Code of Federal Regulations refer to regulations  
28 applicable to claims filed before March 27, 2017.

1 specific and legitimate reasons supported by substantial evidence in rejecting the  
2 contradicted opinions of examining physicians. *Id.* at 830-31. The opinion of a  
3 non-examining physician, standing alone, cannot constitute substantial evidence.  
4 *Widmark v. Barnhart*, 454 F.3d 1063, 1066-67 n.2 (9th Cir. 2006); *Morgan v.*  
5 *Comm'r*, 169 F.3d 595, 602 (9th Cir. 1999); *see also Erickson v. Shalala*, 9 F.3d  
6 813, 818 n.7 (9th Cir. 1993).

7 **Dr. Tyron C. Reece**

8 Dr. Tyron C. Reece, a family medicine physician, treated plaintiff from June  
9 4, 2013 through at least November 30, 2015. *See* AR at 428, 460. At the initial  
10 visit, Dr. Reece conducted a physical examination. *See id.* at 368-69. Plaintiff  
11 reported that he had problems with his mood but did not elaborate. *See id.* at 371.  
12 Nor did Dr. Reece perform a mental status examination or note any psychological  
13 observations. *See id.* at 368-69. Based on plaintiff's history and the examination,  
14 Dr. Reece diagnosed plaintiff with, among other things, PTSD. *Id.* at 369.

15 Throughout the duration of treatment, Dr. Reece noted that plaintiff was  
16 hypervigilant, but also alert and oriented, had sound cognition, and exhibited  
17 appropriate behavior. *See id.* at 372-90, 430-61. On multiple occasions, Dr.  
18 Reece engaged plaintiff in some cognitive behavioral therapy. *See, e.g., id.* at 374,  
19 376, 378, 386, 388, 390, 441, 443.

20 Dr. Reece appeared to have conducted a mental status examination on some  
21 unknown date. *See id.* at 432-58. Despite the fact that there are findings from a  
22 mental status examination on treatment notes across multiple dates, these findings  
23 appear either to be from the same examination or were recorded post-hoc. The  
24 observations from this mental status examination are written across the bottom of  
25 the first page of treatments notes dated August 2014 through October 2015.<sup>4</sup> *See*

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26  
27 <sup>4</sup> It appears that Dr. Reece started writing the results of the mental status  
28 examination on the July 17, 2014 treatment note and started over on the August

1 *id.* The observations are categorized and numbered, appear consecutively across  
2 the notes, and when combined would compose the elements of a single mental  
3 status examination. *See id.* During this mental status examination, Dr. Reece  
4 observed plaintiff was, among other things, angry at a friend, hostile, suspicious,  
5 hypervigilant, depressed, fully aware, and disdainful of his situation. *See id.* at  
6 432-40. Dr. Reece also noted plaintiff had low self esteem, appeared detached,  
7 understood his situation, had an intact memory, and had good insight. *See id.* at  
8 442-58.

9 Dr. Reece submitted two opinions. In January 2014, Dr. Reece wrote a  
10 narrative summary report. AR at 359-65. The January 2014 opinion primarily  
11 discussed plaintiff's physical impairments, but included in the report were  
12 observations from a mental status examination, in which Dr. Reece observed  
13 plaintiff was cooperative but guarded, was anxious, and felt detached and  
14 hopeless. *See id.* at 361-62. Dr. Reece explained plaintiff became anxious and  
15 diaphoretic when describing the shooting, isolated himself, and was easily  
16 distracted. *See id.* at 363-64. Dr. Reece diagnosed plaintiff with chronic PTSD  
17 and clinical depression neurosis. *Id.* at 362. In February 2014, Dr. Reece also  
18 completed a mental disorder questionnaire form in which he opined plaintiff was  
19 oriented, had good cognition, did not have a good outlook of the future, and was  
20 paranoid, hypervigilant, and withdrawn. *See id.* at 424-28. Dr. Reece stated  
21 plaintiff isolated himself, could not maintain focus, and had poor concentration.  
22 *See id.* at 427.

23 **Dr. Norma R. Aguilar**

24 On September 7, 2013, Dr. Norma R. Aguilar, a psychiatrist, examined  
25 plaintiff. AR at 342-45. Dr. Aguilar observed plaintiff was cooperative, coherent,  
26 slightly depressed and resentful, and alert and oriented. *See id.* at 343-44.

27 \_\_\_\_\_  
28 29, 2014 treatment note. *See* AR at 430, 432.

1 Plaintiff exhibited no looseness of thought, had no delusions, and claimed to have  
2 auditory and visual hallucinations. *See id.* at 344. Plaintiff was able to recall  
3 items immediately but not after five minutes, was able to recall his date of birth,  
4 was able to name three presidents, but was unable to perform serial sevens or  
5 threes. *See id.* Based on plaintiff's history and the examination, Dr. Aguilar  
6 diagnosed plaintiff with PTSD and opined he was mildly limited: in his ability to:  
7 interact appropriately with the public, coworkers, and supervisors; in his ability to  
8 respond to changes in a routine work setting; in his ability to respond to work  
9 pressure in a usual work setting; and in his daily activities due to physical  
10 problems. *Id.* at 345. Dr. Aguilar opined that plaintiff's prognosis was good with  
11 psychotherapy. *Id.* at 345.

#### 12 **State Agency Physicians**

13 Two State Agency physicians opined plaintiff had only mild limitations  
14 with regard to activities of daily living, maintaining social functioning, and  
15 maintaining concentration, persistence, or pace. *See id.* at 65, 74, 87, 100. Dr.  
16 M.D. Morgan only reviewed Dr. Aguilar's consultative examination and noted that  
17 plaintiff had not sought mental health treatment. *See id.* at 64-65, 73-74. Dr.  
18 George Davis reviewed Dr. Aguilar's opinion and Dr. Reece's January 2014  
19 opinion, and noted that plaintiff had made no allegations of worsening symptoms  
20 since the September 2013 consultative examination. *See id.* at 86, 99.

#### 21 **The ALJ's Findings**

22 In reaching his step two, step three, and RFC determinations, the ALJ gave  
23 weight to Dr. Aguilar's, Dr. Morgan's, and Dr. Davis's opinions, and gave little  
24 weight to Dr. Reece's opinion. *Id.* at 22-23. The ALJ gave Dr. Aguilar's opinion  
25 weight to the extent it was consistent with clinical signs, plaintiff's examination,  
26 and the record as a whole. *See id.* at 23. The ALJ disagreed with Dr. Aguilar's  
27 opinion regarding social functioning, finding that the record showed plaintiff had  
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1 greater limitations in the area of social functioning than Dr. Aguilar opined. *See*  
2 *id.* The ALJ gave the opinions of the State Agency’s physicians weight to the  
3 extent they were consistent with the record as a whole. *See id.* Finally, the ALJ  
4 gave little weight to Dr. Reece’s opinion because (1) his opinion was inconsistent  
5 with his recommended treatment; (2) the treatment notes did not support specific  
6 limitations; (3) he was not a specialist; and (4) his opinion was inconsistent with  
7 Dr. Aguilar’s examination findings. *See id.*

8 As an initial matter, although Dr. Reece opined plaintiff, among other  
9 things, was nervous, was anxious, felt detached, had difficulty concentrating, and  
10 isolated himself socially, he did not offer an opinion as to the severity of these  
11 limitations. The only specific limitation for which Dr. Reece opined a degree of  
12 severity was plaintiff’s ability to deal with work stress. Dr. Reece opined plaintiff  
13 would have marked limitations in his ability to deal with work stress. *Id.* at 355-  
14 56. Therefore, even had the ALJ given weight to Dr. Reece’s opinion, the exact  
15 extent of his opined limitations were unclear. Regardless, the ALJ did not need to  
16 decipher the severity of Dr. Reece’s opined limitations because his reasons for  
17 discounting Dr. Reece’s opinion were specific and legitimate and supported by  
18 substantial evidence.

19 First, the ALJ gave little weight to Dr. Reece’s opinion because it was  
20 inconsistent with his treatment plan. *Id.* at 23. Dr. Reece’s January 2014 narrative  
21 opinion painted a picture of someone who suffered from severe symptoms of  
22 PTSD and required “extensive psychological therapy.” *Id.* at 365. Despite the  
23 suggested severity of plaintiff’s symptoms, the ALJ never referred plaintiff to a  
24 mental health specialist for treatment. *See id.* at 55. Nor did the ALJ prescribe  
25 any medication. Instead, Dr. Reece conducted some cognitive behavioral therapy  
26 with plaintiff himself. Had plaintiff’s impairment been as disabling or severe as  
27 Dr. Reece suggested, it would be expected that he would have recommended  
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1 psychiatric treatment. *See Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001)  
2 (ALJ properly rejected physician’s opinion when it was inconsistent with his  
3 prescribed conservative treatment plan); *Long v. Colvin*, 2013 WL 4776553, at \*4  
4 (E.D. Cal. Sept. 4, 2013) (“An ALJ may validly reject a treating physician’s []  
5 opinion that is inconsistent with the plaintiff’s conservative course of treatment.”);  
6 *Cubilo v. Astrue*, 2012 WL 273754, at \*7 (C.D. Cal. Jan. 31, 2012) (ALJ properly  
7 found that the physician’s conservative treatment of plaintiff, which included  
8 cognitive behavioral therapy, was inconsistent with his opinion of a disabling  
9 mental impairment); *see also Randolph v. Comm’r*, 2017 WL 4038386, at \*5  
10 (C.D. Cal. Sept. 13, 2017) (characterizing cognitive behavioral therapy as  
11 conservative treatment).

12       Second, the ALJ discounted Dr. Reece’s opinion because it was not  
13 supported by his treatment notes. AR at 23. Specifically, the treatment notes  
14 provided little insight into plaintiff’s psychological functioning. *Id.* As discussed  
15 above, although Dr. Reece opined plaintiff had difficulties in certain areas such as  
16 concentration, he did not actually offer specific opinions regarding the degree of  
17 plaintiff’s functional limitations. Nor do the treatment notes provide any support.  
18 The treatment notes only document that plaintiff was hypervigilant but provide no  
19 insight into how this affected plaintiff’s functioning.

20       Moreover, plaintiff’s argument that the treatment notes support severe  
21 limitations rests on the premise that Dr. Reece performed multiple mental status  
22 examinations which showed multiple findings throughout his course of treatment.  
23 *See* P. Mem. at 10-13. But as discussed above, although the mental status  
24 examination findings were written on multiple treatment notes, given how the  
25 notes were written, it appears that these findings were from one examination or  
26 were written post-hoc. This renders the findings from the mental status  
27 examination less reliable since it is unclear when the mental status examination  
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1 was performed and is actually highly suggestive that the mental status findings  
2 were not from a contemporaneous examination but rather a post-hoc account.  
3 Taking away the mental status examination notes, which are open to question, Dr.  
4 Reece's treatment notes only document a few consistent findings: hypervigilance;  
5 alertness; sound, adaptive, and integrated cognition; and appropriate behavior.  
6 See AR at 372-90, 430-61. These findings do not support severe functional  
7 limitations.

8 Third, the ALJ gave greater weight to Dr. Aguilar's opinion because he is a  
9 specialist and Dr. Reece is not. AR at 23. Dr. Aguilar is a psychiatrist while Dr.  
10 Reece is a family practitioner. It was proper for the ALJ to give Dr. Aguilar's  
11 opinion greater weight on the basis that she is a specialist. See *Garrison v. Colvin*,  
12 759 F.3d 995, 1013 (9th Cir. 2014) (the opinion of specialists are entitled to more  
13 weight as a matter of regulation); *Reed v. Massanari*, 270 F.3d 838, 845 (9th Cir.  
14 2001) (noting that the agency generally gives more weight to specialists than to  
15 the opinion of a medical source who is not a specialist); *Smolen*, 80 F.3d at 1285  
16 (same).

17 Fourth, the ALJ rejected Dr. Reece's opinion because it was inconsistent  
18 with the findings in Dr. Aguilar's examination. AR at 23. Inconsistency with the  
19 objective evidence is a specific and legitimate reason to discount a physician's  
20 opinion. See *Batson v. Comm'r*, 359 F.3d 1190, 1195 (9th Cir. 2004) (holding that  
21 an ALJ may discredit physicians' opinions that are "unsupported by the record as a  
22 whole . . . or by objective medical findings"). Plaintiff argues Dr. Reece's opinion  
23 was actually consistent with Dr. Aguilar's findings. P. Mem. at 11. But as  
24 discussed above, Dr. Aguilar's examination primarily had mild findings. See AR  
25 at 343-44. Plaintiff correctly notes that he was unable to perform serial sevens or  
26 serial threes, as well as recall objects after five minutes, during his examination.  
27 These findings suggest an impairment with memory and concentration, but Dr.  
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1 Aguilar did not offer any opinion as to either. *See id.* at 344-45. The fact that the  
2 findings regarding plaintiff's memory and concentration might be consistent with  
3 Dr. Reece's opinion does not overcome the fact that Dr. Aguilar's findings as a  
4 whole were inconsistent with Dr. Reece's opinion. And because the evidence can  
5 reasonably support the ALJ's determination, this court will not disturb it.

6 Plaintiff suggests the ALJ should have further developed the record because  
7 Dr. Aguilar did not have the opportunity to review plaintiff's treatment records.  
8 *See P. Mem.* at 7. An ALJ only has a duty to develop the record when it is  
9 ambiguous or inadequate. *See Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir.  
10 2005); *see also Mayes*, 276 F.3d at 459-60 (ALJ has a duty to develop the record  
11 further only "when there is ambiguous evidence or when the record is inadequate  
12 to allow for proper evaluation of the evidence"). Here, the ALJ retained a  
13 consultative examiner. *See Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007) (the  
14 opinion of an examining physician that is based on independent clinical findings  
15 constitutes substantial evidence). Plaintiff did not allege his symptoms worsened  
16 after the consultative examination such that another examination was needed.

17 Finally, plaintiff argues the ALJ discounted both Dr. Reece's and Dr.  
18 Aguilar's opinion, and therefore – without a medical opinion to rely on – the ALJ  
19 was acting as his own medical expert. It is true that an ALJ may not act as his own  
20 medical expert, since he is "simply not qualified to interpret raw medical data in  
21 functional terms." *Nguyen v. Chater*, 172 F.3d 31, 35 (1st Cir. 1999); *see Day v.*  
22 *Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975) (hearing examiner should not go  
23 outside the record to medical textbooks to make his "own exploration and  
24 assessment" as to a claimant's impairments); *Rohan v. Chater*, 98 F.3d 966, 970  
25 (7th Cir. 1996) ("ALJs must not succumb to the temptation to play doctor and  
26 make their own independent medical findings."); *Miller v. Astrue*, 695 F. Supp.  
27 2d 1042, 1048 (C.D. Cal. 2010) (it is improper for the ALJ to act as the medical  
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1 expert); *Padilla v. Astrue*, 541 F. Supp. 2d 1102, 1106 (C.D. Cal. 2008) (ALJ is  
2 not qualified to extrapolate functional limitations from raw medical data). But that  
3 is not what happened here.

4 While the ALJ gave little weight to Dr. Reece's opinion, he expressly stated  
5 he gave weight to Dr. Aguilar's opinion, as well as the State Agency opinions.  
6 AR at 23. In assessing plaintiff's RFC, the ALJ imposed two limitations related to  
7 his mental impairments: only occasional interaction with coworkers and  
8 supervisors, and no contact with the public. *Id.* at 24. This is somewhat more  
9 restrictive than the opinions of Dr. Aguilar and the State Agency physicians, who  
10 found only mild limitations in this areas. *See id.* at 65, 87, 345. The ALJ found  
11 the record showed greater limitations in social functioning than opined by Dr.  
12 Aguilar, specifically finding moderate difficulties in this area based at least in part  
13 on plaintiff's hearing testimony. *Id.* at 22, 23. In giving weight to some of the  
14 physicians' opinions but nonetheless imposing greater limitations in one area than  
15 they opined based on his review of the medical evidence, the ALJ was simply  
16 discharging his duty to determine plaintiff's RFC, not acting as a medical expert.  
17 *See* 20 C.F.R. § 404.1546(c); *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir.  
18 2001) ("It is clear that it is the responsibility of the ALJ . . . to determine residual  
19 functional capacity.").

20 Accordingly, the ALJ's rejection of Dr. Reece's opinion was supported by  
21 substantial evidence, and the ALJ did not err in assessing plaintiff's RFC without  
22 relying on Dr. Reece's opinion or further developing the record.

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V.

**CONCLUSION**

IT IS THEREFORE ORDERED that Judgment shall be entered  
AFFIRMING the decision of the Commissioner denying benefits, and dismissing  
the complaint with prejudice.

DATED: March 27, 2019

A handwritten signature in black ink, appearing to read 'SHERI PYM', written over a horizontal line.

SHERI PYM  
United States Magistrate Judge